

1 of the case. In the Cheeks case they had to decide whether
2 the Baltimore City initiative which established the Rent
3 Control Commission violated the Constitution of the State of
4 Maryland and by a nearly unanimous decision except for one
5 judge the court decided, in really a case of first impression
6 and taking logic, that it had never been used before, that
7 what the citizens of Baltimore had done was in violation of
8 the Maryland Constitution because the development of a Rent
9 Control Commission was not "charter material" and was a
10 legislative act which was granted only to the City Council of
11 Baltimore and could not be assumed by the citizenry of
12 Baltimore.

13 Thus, the Court developed some type of protective
14 sphere of legislative activity which not being coached by
15 citizen initiative. The case, I think, surprised a lot of
16 people when it came out. It is so recent that we don't know
17 whether this case will be restricted in its holding to just
18 the precise issue that was before it. It clearly is a
19 troubling question as far as our initiative is concerned. \

20 However, the sludge disposal question is one which
21 is a far more restrictive intervention into activities of
22 the county than would be a Rent Control Commission proposed
23 in Baltimore City. The restriction drafted by Delegate
24 Ficker does not restrict private entrenchment. It does not
25 restrict public entrenchment. It just restricts entrenchment

1 on residential property. It is a very limited restriction
2 felt necessary to protect citizens of the county against what
3 is perceived by our people as a serious threat to our land,
4 water and future generations.

5 So to answer the question, Cheeks seriously will
6 be looked at if this charter amendment ever goes before a
7 court for interpretation of whether it is constitutional or
8 not. It is our view that Cheeks clearly would not fairly
9 preclude this charter amendment although we recognize that
10 there is a serious question there. V

11 Now, the third question, is whether the WSSC as
12 opposed to Montgomery County should have been listed as
13 the party to be restricted by this charter amendment. Well,
14 number one, I don't think that WSSC by a Montgomery County
15 charter amendment could be put in there because WSSC is a
16 strange animal. Every case that comes up -- Every year a
17 new cases comes up about WSSC -- says something different.
18 It is clearly not a County organization, a municipal organi-
19 zation. It appears as a state agency for purposes of
20 retaining sovereign immunity but what WSSC is has not been
21 flushed out and I doubt will ever be flushed out totally.

22 Basically though the citizens felt we had to start
23 some place and the first place to start is the county. Now,
24 clearly a case could be made that WSSC could do some of the
25 things which we have tried to restrict Montgomery County from

1 doing. But that baits the question. It baits the question
2 because if our county officials are told in strong terms
3 that sludge entrenchment will not take place on residential
4 property any more, to violate that through indirect means,
5 we feel, would be politically extremely unwise and as an
6 attorney I think it would be difficult not to find some type
7 of county involvement somewhere along the process.

8 So, to my feeling, this criticism of the amendment
9 is not nearly as severe a criticism as the Cheeks versus --

10 That concludes my presentation.

11 CHAIRMAN ADAMS: Thank you.

12 Delegate Ficker, do you have --

13 DELEGATE FICKER: Thank you very much.

14 You asked about the Citizens for Responsible
15 Disposal. They were very helpful certainly in getting this
16 question on the ballot in that they were riled up, they
17 had a vested interest. There were many people there who were
18 willing to go out and work and collect signatures. However,
19 the signatures were collected by people from all over the
20 county. We had close to 200 people who collected signatures
21 from all sections of the county if you go and look at the
22 names and addresses of the collectors. I collected about
23 1000 signature. I live in west Bethesda. We had people in
24 Silver Spring, Wheaton and so on who feel that we should
25 put an obnoxious use of our land like trenching sewage sludge

1 in a residential zone. It is just that simple. Why have a
2 residential zone if you are going to have that type of
3 neighbor such as a sewage trenching sight.

4 And, you really need to go out and walk some of
5 these neighborhoods right next to the site to get the true
6 feeling of it, to see what type of problem it might present,
7 to see the little children there, see the dogs running
8 around and realizing that sooner or later the dogs are going
9 to get in the trenching site and they are going to walk home
10 with the stuff on their feet and the kids are going to get
11 sick and you are going to wonder really was it the trenching
12 site that made them sick. And, when you drive behind some
13 of these cement mixers you know that there is always something
14 dripping out of a cement mixer, always. And, instead of
15 water it is going to be sewage sludge because that is what
16 they use to haul the sewage sludge. I just don't think
17 this is the type of use that is compatible with homes and
18 schools. And, from seeing the site that were proposed they
19 were going to be very near schools.

20 In the past various citizenry have gotten all
21 rile up and I have attended some of the meetings. They had
22 this site over in Ednor and Silver Spring and they had the
23 people up in Poolesville and they had various other people,
24 some in Potomac were concerned that they were going to
25 trench Avenal Farm eventually and they got upset and they

1 ended up with the sewage sludge. I thought, well, now is the
2 time to do something a little more drastic about it. And,
3 something that needed to be done was to educate the people
4 of Montgomery County about sewage sludge and what better way
5 to do that than to put a question on the ballot, what better
6 way to get a lot of people involved in a question.

7 Now, besides that I knew that Montgomery County
8 very seldom terminates any program and they never abruptly
9 halt a program even though it is called an interim program
10 as this was which has been going on for five years. Yet,
11 what we needed was an abrupt halt to a program and the
12 political process, the normal political process, just wouldn't
13 allow an abrupt halt to this sort of a program.

14 I saw the position of some of our elected officials
15 change quite a bit once we announced the petition and started
16 getting the signatures because they knew this question was
17 going to be on the ballot. They knew it. And, after they
18 thought about that they started changing their position a
19 little bit.

20 The sewage sludge question is not moot in Montgomery
21 County. It is not moot in Montgomery County despite what
22 certain people would have you believe. The Calverton
23 question has been up to the Supreme Court once on a technical
24 question. There are five different cases, three in Montgomery
25 County Circuit Court, one in the P.G. Circuit Court, one in

1 U.S. Court of Appeals, all affecting that Calverton site.
2 Dickerson is going to be going to court also. I know. I
3 have some people on the lawyer's committee talk to me about
4 that. And, it is certainly conceivable to put it mildly
5 that that site, that composting site, would not be on line
6 January 1st when the question of whether or not Montgomery
7 Country trenching turn should come again comes up. So we
8 are going to be faced with trenching.

9 What we have -- It amounts to a political shoving
10 ground in Montgomery County. They are saying trenching is
11 no good but other people are saying that composting is no
12 good.

13 So the County in the past has taken the path of
14 least political resistance in questions like this and they
15 have, in effect, well, the health and welfare of a few per-
16 sons isn't that important as long as we can keep most of the
17 people happy or at least keep most of the people from being
18 upset.

19 And, this type of amendment is very important to
20 protect minorities, to protect groups of people who are very
21 important individually but may not number in the large numbers
22 that impress politicians.

23 So, the question of sewage sludge is going to be
24 upon us very, very soon. It is now. They are trenching in
25 Germantown now. It is going to be with us for a long time to

1 to come until we end up with some satisfactory solution to
2 sludge disposal in Montgomery County. And, to my mind, the
3 only satisfactory solution is the Metropolitan Life solution
4 where they get rid of the sludge very near where it ends
5 up through the natural processes of gravity. They have the
6 sewage treatment plant at Blue Plains because gravity pulls
7 it down there. They don't have it up at the top of Sugar Loaf
8 Mountain because gravity doesn't pull it up there. It pulls
9 it the other way. That is why it happens to end up in Blue
10 Plains. It is not that we want it to end up at Blue Plains,
11 gravity pulls it down the hill.

12 The citizens I know feel very strongly about this.
13 The question is going to be on the ballot and believe it
14 this question is going to pass. There is no doubt about it.
15 This question is going to pass. If you look at the result of
16 Question F in the last election to ban a landfill system of
17 refuse disposal in residential zones. That is 70% of the
18 vote. It won in every single precinct in Montgomery County.
19 This question -- I don't think people think that sewage
20 sludge is any less obnoxious than garbage in a residential
21 zone. This question is going to pass. The Republican Party
22 voted to supported it. It is going to be marked yes on
23 Republican ballots. The Legislative Committee of the
24 Montgomery County Civics Federation has voted to support it.
25 So, I think you are going to see a lot of support. I can't

1 see really a large constituency opposing this question except
2 maybe some teamsters who would be driving the sludge trucks.
3 The alternative, I suppose, to opposing it is to find some
4 legal technicality and challenge it that way. But, I don't
5 think it would be wise for you folks to set yourselves up as
6 the Maryland Court of Appeals and say that there is something
7 wrong with this question legally without having a court test
8 or just having some decisions that may or may not be relevant
9 or may not be entirely relevant. I think you have to look
10 at the realities of the situation. The sludging is unaccept-
11 able. If I lived next to a sludge site, and thank goodness
12 I don't because I have two little kids, there wouldn't be
13 anything that I wouldn't do if I couldn't move -- If I didn't
14 have the financial wherewithall to move, there would be
15 absolutely nothing that I wouldn't do to halt that process
16 next door to me, absolutely nothing. Believe me, I would be
17 camping out here in the County Office Building day and night
18 until the process was changed because it is a filthy business
19 and it is not healthy.

20 It is a good political issue. There isn't a
21 constituency really in favor of putting the sludge in a
22 residential zone. It is getting county-wide attention now
23 simply because we put it on the ballot. It is no longer
24 little old Germantown versus everyone else. It is a county-
25 wide issue. And, people all over the county in citizens

1 groups are thinking is this the kind of land use I want in a
2 residential zone. They are going to answer a resounding no
3 just as they did in Question F.

4 If you have any other questions I will be glad to
5 answer them. I know that sludge trenching has been very
6 expensive in the past. There was an article June 12, 1980
7 in one of the downtown papers which talks about \$45.00 a ton
8 entrenching process. That doesn't include the cost of the
9 land which is very, very expensive in Montgomery County to
10 trench.

11 That is about all I have to say. It is going to
12 be very difficult, I think, to mount a campaign to defeat
13 this question because citizens are opposed to sludge trenching
14 in residential zones and that is what the question does. It
15 is a plebiscite really beyond the legal technicalities of it.
16 It is a plebiscite as to whether or not this sort of horrendous
17 process should go on. Now, should it be in the charter?
18 There is a lot in the charter that nobody every reads and
19 even if you have read them all, even if you have read them
20 at least once you have probably forgotten them. I looked
21 through the charter the other day and I was amazed at some
22 of the things in the charter. You say, well, this is going
23 to clutter up the charter. Look at all the other things in
24 the charter that --

25 MR. DALRYMPLE: You put some of them in.

1 DELEGATE FICKER: I put -- I wish there were a lot
2 more of them in there that I could have put in. You look at
3 some of these other sections in here and some people might
4 say, gee, why are you wasting printer's ink and paper printing
5 this. This is a gut issue. This is a politically sexy issue
6 that attracts a lot of people and this is just the sort of
7 thing that -- Believe me, if it is in charter they are going
8 to read.

9 CHAIRMAN ADAMS: Thank you all for that.

10 I have several questions, some technical. Let me
11 start with one more general. It seems to me that you all
12 deserve enormous credit in terms of forcing the county
13 government to look at some alternatives that it was not other-
14 wise looking at. I don't claim to be an expert on what we
15 just saw but I certainly just as a citizen, not in my
16 present capacity, would be concerned with the kind of issues
17 that you talk about, about what might end up in our ground
18 water.

19 But, Delegate Ficker talked about the political
20 shoving match that is about to occur, that is occurring.
21 I might describe it in another way. What concerns me here
22 is if we look at the waste disposal question as sort of a
23 checkers game and I come up and look up at the checkers game
24 and say, go ahead, I want to stop the game, you all can move
25 anything you want, but this one checker, don't move that. I

1 am going to put my thumb on that and then you come up and
2 put your thumb on another and somebody else puts a thumb on
3 another and all of a sudden it is all thumbs and all moves.
4 I don't know what is to stop people that don't like composting
5 next to them or people who don't like something else next to
6 them. And, I would worry about whether we get into this
7 political shoving match and the end result, as I say, is sort
8 of all thumbs and no moves and the county is in a very bad
9 situation if the charter ends being full of specific remedies
10 to take care of specific things that clearly upset specific
11 groups of people. If you could speak a little more to that
12 I would appreciate it.

13 MR. KNIGHT: Okay. I guess I would have to maybe
14 very attack your analogy. Each of the pieces on the checker
15 board are of equal weight. I don't believe this is the case
16 here at all. This is a disposal process which would have to
17 argue, and I think could do so successfully in any forum,
18 that, first of all, is not desirable in its space. Secondly,
19 is not technically feasible in this county.

20 As far as, shall we say, placing the county in the
21 position where they can't move at all, we are just so far
22 from that that I really would have difficulty addressing it.
23 There are a number of very viable options open. They each
24 have their difficulties, there is no question about it. But,
25 that after all is what the county and the technical arm that

1 is available to them, to the Executive, are here for. That
2 is why we support them with our tax dollars.

3 You mentioned, for example, composting. There are
4 some who would argue with composting. Perhaps true. I think
5 you will find an order of magnitude of greater support,
6 greater support for composting than sludge entrenchment.
7 It is definitely a more desirable approach. I think you will
8 find even those who are decidedly against a given location
9 for composting would not debate the desirability of a process
10 over sludge entrenchment. They might argue about the details
11 of a particular process being used at a site. They might
12 very reasonably say why are we doing it 40 or 50 miles away
13 from the inevitable source of the material as Delegate Ficker
14 described.

15 To me there is such a difference in the weight that
16 one would have to give to each of these arguments starting
17 with the whole concept of sludge entrenchment in a residential
18 zone to composting in a residential zone to composting in an
19 industrial zone to composting at the plant. And, beyond
20 that there are other -- Let's call them political avenues that
21 we do have after all here. We do have a very severe political
22 problem between the two counties, Prince George's and
23 Montgomery, as reflected in the Calverton fiasco. I think I
24 can call it that safely. We have a question with a child of
25 the Federal Government and with the District of Columbia.

1 And each of these things are amenable, I would believe, and
2 I think anyone could argue logically to attack on several
3 fronts. If these local governments all got together, for
4 instance, and make a concerted effort with the Federal Govern-
5 ment, I think there may be solutions that could develop.

6 To argue, gee, if we put this on the charter, you
7 know, we are going to restrict the county and I won't be able
8 to do anything and, gee, after all, I have got to do something
9 with it because we are going to keep on making day after day.
10 I really think -- I think the number of avenues and approaches
11 and options that are open are far too broad to try to circum-
12 scribe the problem.

13 CHAIRMAN ADAMS: I was suggesting the people near
14 the composte to say, gee, I don't want the composte near me
15 so they go out and get their positions and whatever the
16 alternative to that is, the people near that site go out and
17 you have a charter that has a whole series of thy shall not
18 do this and the other.

19 MR. KNIGHT: That presumes that each of these would
20 pass, that you could gain the support from the citizenry,
21 that you could get the signatures, that you could make the
22 arguments and they would pass. I guess I would argue that
23 if it really became capricious I would like to think, and
24 I feel personally, if it really became campricious it wouldn't
25 work.

1 CHAIRMAN ADAMS: That doesn't mean the first one is
2 is okay because the third or fourth times the public would
3 say, oh, my God, we really have to stop this. I am not saying
4 you don't have the first case.

5 DELEGATE FICKER: Also, look where else in the
6 country this process is used. I don't know of anywhere else
7 where they are trenching. Maybe there are a lot of locations
8 around the country where they are trenching. If it is such
9 a nice process why don't they use it somewhere else?

10 CHAIRMAN ADAMS: Mr. Knight, can you speak to that?
11 Have you all looked into that question?

12 MR. KNIGHT: There are so many little municipalities.
13 As I said, there is nowhere else. Somebody could probably
14 find the exception. It is rarely used if at all.

15 CHAIRMAN ADAMS: Okay.

16 MR. DALRYMPLE: Let me ask a question while we are
17 on that. I am confused by what you are trying to accomplish
18 in this amendment. It talks about spending, it talks about
19 permits. It limits it to the county and it limits it to
20 residential zones and yet all we are hearing here that the
21 process is a very undesirable process. I don't have any
22 doubt that it is an undesirable process. All you have got to
23 do is look at the few pictures you have got as I have here
24 and see it in action. But, what this does is amend the
25 charter in a way that I don't think is going to have any

1 meaning. How is it going to have any meaning if they have
2 got 2000 acres they intend to trench the sludge and it is
3 residential? What happens if they rezone it to industrial?

4 DELEGATE FICKER: Well, there are --

5 MR. DALRYMPLE: Don't give me the poltiically
6 unpopular bit. I know that. I know it is politically
7 unpopular to do it, to avoid this, but doesn't, in fact,
8 that have real possibilities. They are under a court order
9 to get rid of sludge. They can't say, oh, the charter pre-
10 vents it. The charter says you can't do it in residential
11 so rezone it to industrial and do it.

12 DELEGATE FICKER: There is no question but this is
13 an obnoxious type of industrial use of land. There is no
14 doubt about that. As for rezoning, you either have to have
15 a comprehensive rezoning which takes times with public
16 hearings and so on.

17 MR. DALYRMPLE: It doesn't take long when they want
18 to do it.

19 MR. CHEN: During court proceedings, Robin.

20 DELEGATE FICKER: Pardon?

21 MR. CHEN: During court proceedings they can do it.

22 DELEGATE FICKER: Well, they can but whether or not
23 they would --

24 MR. CHEN: They have done it.

25 MR. DALRYMPLE: Well, they have used the comprehensive

1 process to get rid of usage in areas that are politically
2 unpopular. They did it over in Kemp Mill and Four Corners.
3 They just did it in Potomac. You supported that. I was
4 here the night that you came in and supported down zoning.
5 That was political popular to down zone but they used the
6 process to get rid of something.

7 But, I don't see where what you are proposing here
8 is necessarily effective and probably is very easily defeated
9 by the same body you are attempting to restrict the use of
10 doing it. They are the ones that do the zoning and they
11 very easily can take-- If they want 1000 acres to trench,
12 they take an area of 1000 acres and another 1000 acres around
13 it and say, all right, let's have a comprehensive plan and
14 everything in the middle is industrial where we are going to
15 trench and everything else is buffer and they comprehensively
16 rezone it. And, there has not been a comprehensive zoning
17 upset by the court in Maryland in history. So how is this
18 effective?

19 DELEGATE FICKER: All I can tell you is that
20 generally there may be an exception with the court involved
21 I suppose -- Where the court is involved in comprehensive
22 rezoning and it is done immediately or a matter of weeks.
23 Generally it takes a long time. And, we are going to be in
24 a time crunch situation focusing on that January 1st date.
25 There is going to be pressure here in Montgomery County,

1 either the composters or trench.

2 MR. DALRYMPLE: I agree with that but I am suggest-
3 ing to you that it only takes -- There is a minimum amount
4 of time that it takes except by statute for advertising an
5 action. If they want to preserve the farm land they did it
6 in record time and they just -- Del Swope came in and down
7 zoned the living daylights out of thousands of acres to do
8 it and they wanted to do it. I am only suggesting to you
9 that if it becomes essential for them to do that here and
10 rezone the sludge trenching site to industrial they have
11 done it. They have completely defeated, I think, what your
12 goal is here and we have got an amendment in the charter
13 that has not meaning.

14 CHAIRMAN ADAMS: If I might say for the record
15 there is a perspective that says it is good they have
16 provided -- That they have used the term "residential zone"
17 because in effect that makes it less rigid than if they
18 hadn't provided that.

19 So perhaps one argument is that that was an example
20 where the authors were attempting to provide some flexibility
21 for --

22 MR. DALRYMPLE: And, I suspect that was why it was
23 done so you can't say it was just an exclusionary act here,
24 where we are not for all times cut off somebody's right to do
25 something and we bound them in a manner that you are not

1 allowed to bind the government. But, I am still saying that
2 if the goal of this amendment is to bring a rapid halt to
3 trenching this doesn't do it. Why would be gum up the
4 charter for something that is ineffective.

5 CHAIRMAN ADAMS: Bill Chen.

6 MR. CHEN: Aside from the zoning aspect of it,
7 there is even cases in Maryland --Talking about a state
8 agency, they are not going to be bound by those zoning
9 regulations. I will give you -- Where the state DOT went
10 to court on it Robin. It is one thing if you said you can't
11 do it on residentially zoned land that was classified in
12 that district as of June 30, 1980. I don't know how legal
13 that would be but that is tying it down. If you are trying --
14 We don't sit as a court of appeals and I don't think any of
15 try to be, but I think our role in part is to try to help in
16 focusing on ways the charter can be amended properly and
17 addressed properly. I think the concern I have with this
18 is that I don't question the problem. But how to deal with
19 it in the context of a charter amendment, I don't think this
20 does it to be very honest with you.

21 CHAIRMAN ADAMS: Could I ask Delegate Ficker a
22 question whose interest in amending the charter is more
23 long standing than the Citizens for Responsible Disposal.
24 If the State Constitution authorized or allowed citizens at
25 a local government level to initiate ordinances as opposed

1 to charter amendments, which I understand is in some dispute
2 but probably not allowed now, would you, in 1978 and now,
3 use that initiative route? In other words, to initiate an
4 ordinance as opposed to initiating a charter amendment? In
5 other words, do you use the charter amendment approach and
6 have you suggested it to these folks because there is no
7 ability to initiate an ordinance?

8 DELEGATE FICKER: Well, if we initiated an ordinance
9 it very likely would require a much larger number of signatures.
10 Are you thinking of a state-wide question?

11 CHAIRMAN ADAMS: No, no. If the State Constitution
12 said, for instance, that in a local government -- I think it
13 would be less signatures rather than more signatures than is
14 required to amend the charter. You would be able to initiate
15 a local ordinance.

16 In other words, let's say the State Constitution
17 said, rather than take 10,000 signatures to amend the County
18 Charter, with 5000 signatures you could put a proposed
19 ordinance on the ballot to be voted on and then would be part
20 of the laws, part of the code of Montgomery County as opposed
21 to the charter. Would you use that route rather than the
22 charter amendment?

23 DELEGATE FICKER: Well, that is a hypothetical
24 question. I don't think we are ever going to have that
25 alternative. I sit on the Constitutional and Law Administrative

1 Committee through which those proposals have to pass and I
2 think out of 22 votes such a bill in the past has gotten may-
3 be three votes or four votes. And, unless there is some
4 dramatic change in the make up of the assembly in their
5 thinking, which I don't see despite the popularity of such
6 local initiatives, I don't see such an alternative presenting
7 itself. And, if it did, I suppose that we would evaluate
8 the situation at the time, evaluate the number of signatures,
9 talk to some attorneys to see which is more likely to succeed
10 in the long run and make a choice. Right now we don't have
11 that choice. We are just dealing with what we have and try-
12 ing to fight this process every step of the way in a reason-
13 able fashion. This is what we came up with. Maybe there is
14 a way that we could have drafted this question better to make
15 it more effective. But, we haven't done it and we don't
16 have the signatures. It takes an awful lot of work to get
17 these signatures and this is what we have now. This is the
18 question that is going before the voters. Now, maybe someone
19 wants to take the trouble to collect a lot of signatures and
20 amend this question and in the next election they can go ahead
21 and do it, but I don't think there are many groups that have
22 the perseverance to get the signatures and go through all the
23 checks you have to go through to amend the question. There
24 have been very few attempts really to amend the County Charter.
25 If you look over the history of the County Charter, there

1 have been very few attempts and I think only one citizen
2 initiative has been successful in winning approval of the
3 voters.

4 So you can start out with a lot of different ideas
5 and attacks on those ideas and look what filters through.
6 Since we have had this charter there has been one that slipped
7 through and that is not very much considering all that has
8 been done in this county.

9 MR. RYLAND: Mr. Adams, if I could have a couple
10 of comments briefly. Number one, on your assumption --
11 your hypothetical of the initiative by county voters. First,
12 to make it all analogous to charter amendment, you would have
13 to make it reputable only at the option of the county voters.
14 If you just passed a provision that allowed county voters
15 to pass a local ordinance, I would assume the County Council
16 could vote out that local ordinance at any option unless you
17 provide some mechanism for locking it in.

18 Number Two, just from the perspective of a public
19 interest lawyer fighting one of the battles using as many
20 tools as you can have, I, for one, would rather have a
21 charter amendment in there that county officials might try
22 to figure a way to get around than to not have that charter
23 amendment in there depicted as it possibly could be.

24 CHAIRMAN ADAMS: That is informative to me because
25 my own feeling is -- My thought was that perhaps some of

1 technical amendments that the court is called in to question
2 perhaps should be ordinances and perhaps some people feel,
3 gee whiz, we don't have any way to express our opinion through
4 an advisory question or an initiative for an ordinance so we
5 have to amend the charter.

6 I certainly understand your point that if it were
7 only an ordinance it could be repealed as an ordinance unless
8 there was a special provision. But I simply wanted to know
9 if you sort of felt that strongly about the question or
10 whether this was the only vehicle the citizens have to vent
11 their concerns.

12 DELEGATE FICKER: Well, you know, look at all the
13 sludge battles that have taken place in the county before.
14 The citizens always lost. This the first time the citizens
15 have won and I think this petition had a lot to do with it.

16 CHAIRMAN ADAMS: I think Bill Chen had a question.

17 MR. CHEN: I was just going to say, Robin, when
18 Dalrymple and I talked about it, we are not trying to demean
19 the effort. It is a heck of an effort but I am sure you
20 have experienced yourself, sometimes you get these types
21 of provisions where they are so easy to circumvent and
22 I think that is where he and I are coming from when we see
23 something like this. I think you are right. I think it is
24 going to pass. I think there is no doubt. I think you are
25 right when you talk about how sexy this issue is. Certainly

1 we don't have any control over something that appears on the
2 ballot or anything like that. I don't think we have --
3 But when you see something like that coming down the road
4 and you know the effort behind it and you see how it can be
5 circumvented, then you start to get discouraged yourself.
6 No one has questioned the motives or the goal for what you
7 are going to do.

8 DELEGATE FICKER: Well, I realize that there are
9 a lot of bright people in the county, a lot of good attorneys
10 who could circumvent one thing or another, but I do know that
11 we have gotten futher now than we have gotten in the past.
12 In 1976, I got sued six different times in attempts to keep
13 three questions off the ballot in the first place. Apparently
14 the county decided against that, decided they don't have a
15 leg to stand on to try to prevent it from being on the ballot
16 in the first place. If someone wants to try to circumvent
17 it, we are going to be right back trying to take care of that
18 problem when the time comes. But, we are going to be that
19 much further down the road and it is going to be a couple of
20 years later and during that time we are going to have a lot
21 of kids and a lot of families that won't be exposed to this
22 process more than likely. It will take a long time to cir-
23 cumvent and that is what we are trying to do here in a sense.
24 It is not the only thing we are trying to do but in a sense
25 we are buying time and I think we are doing it pretty

1 effectively with this petition. Maybe it can be circumvented
2 by some federal judge who wants to set himself up as the
3 supreme being and say all you citizens, 70% of the citizens,
4 who don't want this in a residential zone, you are all wrong,
5 you can all go you know where. I am going to put it there
6 and maybe he is going to set himself up like that. Maybe
7 he won't. If he does we will just have to start all over
8 again and not cry about our loss. We have gambled what we
9 had. We will just start over and use whatever clever ideas
10 we can think of to prevail in the end. Maybe we will lose
11 a battle but end up losing the war eventually. If some
12 federal judge or some county officials want to put down this
13 mandate, this plebiscite, this view point of the citizens,
14 that is up to them. Maybe somebody will run against them and
15 defeat them.

16 MR. KNIGHT: I might add just as one of the people
17 who went through seven shades of hell when we first started
18 this exercise will take any tool and will take any forum
19 that we can get. That was one of our biggest single problems,
20 was finding an adequate forum into which we could bring our
21 case and to tell our story. Quite fortunately, and with all
22 due regard to the County Council, after some persistence,
23 we were able to get a forum that was adequate. It wasn't
24 ideal but it was adequate.

25 So, as I said, I may be out there throwing rocks

1 at the truck if that was the only tool I had. But, I am
2 happy for one, that fits my natural, civilized instincts a
3 little bitter. I will take any one we can have.

4 MS. DAVIS: I think we would all agree that trench-
5 ing sludge is both obnoxious and probably technologically
6 an obsolete means of sewage disposal. And, I am beginning to
7 see what your political goals are certainly in this effort
8 and I suspect you have already been successful and be even
9 more successful should this pass.

10 But I think there are some concerns in terms of
11 misleading voters and residents in the county of what this
12 is going to accomplish. I agree with Mr. Dalrymple and Mr.
13 Chen that if we -- You know, we talked about how the county
14 can circumvent this by a rezoning effort, but I would like to
15 go back to something that Mr. Ryland was talking about. It
16 sort of slid by a little too fast for my purposes. I wonder
17 if the county even has to be the group that does circumvent
18 it because it stands out in some people's minds the extent
19 to which the county is even effective.

20 Now, you have allowed as how reasonably sure there
21 could be some county involvement found and so forth. But, I
22 was wondering if you could just for a minute address what
23 you all see as the differences between the role the county
24 plays in this whole trenching process and that of the WSSC
25 and how this amendment is going to affect whatever the WSSC

1 role or involvement in this whole trenching issue is.

2 MR. RYLAND: Okay. Number one, more than one
3 attorney has been involved in this effort and the attorney
4 principally has researched how the county has handled these
5 sludge and sewage permit problems and the payment, the
6 authorization of money, expenditures and appropriation of those
7 expenditures advises me it has been done in a variety of means.
8 Sometimes the county has gone after the permits and sometimes
9 WSSC has gone after them. Sometimes it is state money,
10 sometimes it has been local money. I believe that the law-
11 suit, the Federal suit, involves the county. That is one
12 reason it was constantly thrown up in our face. Well, we
13 are under Federal court order that we have got to get rid
14 of the sludge somehow and, you know, it is our responsibility.
15 Well, it is Montgomery County's responsibility and they are
16 the ones that are acting. I wouldn't might having the
17 handle of this charter amendment as being one means of going
18 after and trying to find out whether they legally can or
19 cannot participate de facto if not de jure in this sludge
20 disposal process.

21 But, no, I cannot give you a detail answer to the
22 best of my satisfaction.

23 CHAIRMAN ADAMS: So you don't have a specific
24 example of something that the county does that is covered
25 by this amendment?

1 MS. DAVIS: Other than reviewing WSSC's budget or
2 being a main party --

3 MR. RYLAND: Clearly under some of the WSSC cases
4 that have reached the Maryland Court of Appeals and statutes
5 in the State of Maryland regarding WSSC, yes, you have
6 reviewed money, expenditures. I believe you also have the
7 county in some instances have gone to the permit themselves,
8 some the state.

9 MR. DALRYMPLE: They don't have to get the permit.
10 If they wanted to circumvent this, they could tell WSSC to
11 get the permit, tell WSSC to float the loans.

12 DELEGATE FICKER: Talk about misrepresenting, it
13 seems to me that the county has been holding all the hearings
14 on the sludge and they certainly have been representing to
15 the citizens of Montgomery County it is their baby, they are
16 running the show. The citizens haven't been coming to a
17 hearing held by the WSSC Commissioners on the various sites,
18 on the whole process. The County Council has been receiving
19 eagerly very technical arguments on whether or not trenching
20 should be done, where it should be done, how it should be
21 done over a period of years and so on. If anybody is mis-
22 representing, it seems to me that the county government is
23 doing the misrepresenting. The county is involved with land
24 acquisition, it is involved with monitoring. Sure, they can
25 play a little shell game and say, well, the WSSC is doing this

1 and we are not even though we are calling them up on the phone
2 and telling them what to do. They can play that little game.

3 But, I think it is made of very thin fabric and
4 I think the county and WSSC are working hand in glove and
5 have been in the past and we can get all kinds of subpoenas
6 and information as to what the county's involvement has been
7 in the past, what it will be in the future. I think this
8 whole sort of process is riddled through and through with
9 county involvement. Maybe it is written into their job
10 description, maybe it isn't. But the impression given to the
11 people through the public hearing process certainly is that
12 is the county's ball game and this is where the misrepresenta-
13 tion has been. We never dreamed that the WSSC actions could
14 be covered by an amendment to the County Charter. We knew that
15 it couldn't. We knew also that there is a lot of county
16 involvement.

17 MR. DALRYMPLE: Far be it from me to sit here and
18 try to defend the County Council. I am usually sitting down
19 there where you are attacking them. But, I believe the
20 State health laws require the WSSC be the permit receiving
21 agency and the operating agency. There isn't any question
22 that the county has to be involved in it. I think it has
23 to be in their 10-year plan as a matter of fact before they
24 can go at it. But that doesn't get -- Again, the amendment
25 doesn't stop it.

1 Let me just ask Mr. Ryland a question concerning
2 the Cheeks case and the applicability of this proposed
3 amendment to the doctrine laid down in there. Can you
4 distinguish between what is proposed here, which I think you
5 have concluded is not prohibited by Cheeks. Am I paraphrasing
6 what you said right?

7 MR. RYLAND: No. There is a very strong question
8 there and I think the question is personally ambiguous which

9 MR. DALRYMPLE: Suppose this proposed amendment
10 said the same thing it says except instead of talking about
11 trench and sludge it was hospitals in residential zones.
12 Would you say the same about the Cheeks case or is that
13 affected at all that way?

14 Do you see where I am heading? If the trenching
15 of sludge is not under Cheeks then hospitals may or may not
16 be and don't you eventually get down to nursing homes and
17 gas stations and everything else and then you get to a point
18 where basically you are writing the zoning ordinance in the
19 charter and then clearly you get under the Cheeks doctrine,
20 don't you?

21 MR. RYLAND: There I think you are making a
22 significant distinction between hospital use.

23 MR. DALRYMPLE: I am not making it. I am asking
24 you to make it.

25 MR. RYLAND: Well, I think part of the problem of

1 the Cheeks case is that it is a very muddy case. It is muddy
2 written. It doesn't provide any clear criteria for deter-
3 mining what is "charter material" and what is not charter
4 material. It rests upon one out of state court precedent
5 which was revised by the state legislature the following year.

6 I just have some serious questions as to how far
7 the Court of Appeals is going to want to extend that decision.
8 I think it would be grossly premature to evaluate this amend-
9 ment by virtue of that one holding of that case.

10 MR. DALRYMPLE: I think I could agree with that.
11 When you see what it is that was put into the charter. God,
12 it was page after page with the details of it. I think there is
13 clearly the major distinction between that and what is
14 proposed here. I can see enough of a single area there too,
15 that charter is really a general provision and we don't get
16 into the specifics of the local law. Otherwise, you are
17 taking your charter provision or your amendment to your
18 charter provision and granting yourself an initiative of
19 the legislation.

20 MR. RYLAND: Number one, I want to add that I
21 greatly appreciate those of you on the Commission that are
22 addressing these kinds of issues because it is going to
23 help interest people in the future to help plan these things
24 in a way that will be less subject to these kinds of
25 criticisms. I think the citizens should be alerted to

1 whatever possible ways people may try to get around the pro-
2 hibition that the county citizens may very well implement
3 in November.

4 MR. DALYRUMPLE: Believe me, it is a lot easier to
5 criticize the way somebody wrote it than to write it. I know
6 I have sat on the other side of that too. Anything you
7 write, somebody can take a shot at it.

8 MR. RYLAND: Well, I know you and Mr. Chairman have
9 had far more experience dealing with this kind of question.
10 But, again, I have to go back to the point that if you put
11 in the County Charter, that you are one leg up from not having
12 it in there even if there are possibly ways of getting around
13 it.

14 DELEGATE FICKER: You can also say how can you have
15 a detailed, overly detailed, County Charter when you only
16 have one or two details. There is such a filtering process
17 involved with getting the signatures and then getting the
18 question passed, going through the campaign and getting it
19 passed, that you are going to end up with very, very few
20 questions at the end of all this as to whether or not it is
21 a detail or whether or not it isn't a detail.

22 MR. DALRYMPLE: I don't think detail necessarily
23 means it depends on the number of words in there. I think
24 it depends on the generality of application of what it is
25 you are talking about. We could debate that all night.

1 CHAIRMAN ADAMS: Yes, and we have some people in
2 the back.

3 MR. MAXEY: Mr. Chairman, I am Don Maxey. I am
4 on the agenda to speak later but I do have a response within
5 the context of two or three questions just asked that I would
6 like to give you now.

7 First of all, the question with regard to the
8 financial involvement in the county in trenching and whether
9 or not this would, in fact, serve any purpose. I was concerned
10 about this so I called Mr. Galt's office and spoke to a
11 gentleman there by the name of Ed Raleigh. He went to some
12 trouble to check into this and called me back the next day
13 and informed me that the funding of WSSC projects comes
14 about through general obligation bonds that are backed by
15 the full faith and credit of both counties and the taxing
16 authority of this county. I think most courts would consider
17 that a direct involvement.

18 If WSSC should ever default, that full debt falls
19 back upon the counties to pay.

20 The other point is on the direct tie in to the
21 county with the permit, it is absolutely essential and
22 required by law that the county, as just mentioned here,
23 amend the 10-year water and sewage plan prior to any work
24 by WSSC. This amendment has to be approved by a state
25 agency. They have 90 days to respond to it, otherwise it is

1 automatically assumed to be okay. But, it is, in effect, a
2 state permit. It goes to the Department of Health and
3 Mental Hygiene.

4 So, it would be pretty tough really for the county --
5 and I don't think they would really would want to, but I
6 think most members of the County Council fully intend to get
7 away from this trenching just as quick as they can.

8 Now, the other point that was raised just now
9 concerned whether or not simply requiring a zoning change
10 is going to help us that much. I speak to you -- I am not
11 a member of this particular group. The conservation group
12 that I represent has been in operation for about 10 years
13 in conservation hassles. We lost our trenching hassle
14 several years ago. The slides you see up there were taken
15 right up the head of Ten Mile Creek. We are still very
16 bitter about it. We think the whole county should be very
17 bitter about it.

18 That well you see pumping out 100 gallons a minute
19 in that picture there has been permanently compromised for
20 all practical purposes. That well would have provided
21 survival water for every man, woman and child in Montgomery
22 County in the event of some kind of natural or, God forbid,
23 man-made emergency. Water sheltered from fallout, from toxic
24 spills. It is 140,000 gallons per day, a court for every
25 man, woman and child in this county. And, we don't have such

1 a source really to fall back on. The driller that drilled
2 that was from Baltimore County. He said had that test well
3 #3 been discovered there, the county would have sent people
4 out there to immediately mark it off and permanently mark
5 it as a protected resource.

6 We cooperated somewhat with the county in trenching
7 there after we realized we were losing hoping we could keep
8 them out of the major fractures going to some of these wells.
9 Unfortunately, they chose not to keep out of those fractures
10 and to convince us that it was okay to trench in the fractures
11 where the deepest dirt happened to be when they got up there
12 and found out how much rock there was. They set up a meeting
13 with Dr. Kenneth Weaver, with the citizens of the Ten Mile
14 Creek group and the Clarksburg and Boyds area. Dr. Kenneth
15 Weaver, who heads the Maryland Geological Survey, Arnold
16 Shifner, from the Department of Natural Resources, and a
17 Dr. Attman from the U.S. Geological Survey. They all informed
18 us it didn't really matter whether they trenched in the
19 fractures or not, that that well, the 100-gallon a minute
20 well, would be compromised for several generations based on
21 their previous experience. That the nitrates alone from
22 the sludge -- We are talking about trenching sludge four
23 feet thick. It is not a topical application like you might
24 do in some oriental countries. It is an injection, a kind of
25 a mainlining injection.

1 Now, what does this do for us? A zoning change
2 guarantees a site specific public hearing. Do you realize
3 we are not guaranteed that now? The County Council, out of
4 the goodness of their heart, may give us a public hearing
5 but the people in Clarksburg found out about five years ago
6 from a decision from Judge Calhoun they only have to hold a
7 public hearing under the county law for the general topic
8 of a location of a public facility. They do not have to
9 list any site specific. And, we thought that was true.

10 MR. DALRYMPLE: How about the 10-year plan? They
11 have to show it in that.

12 MR. MAXEY: In the 10-year plan they would have to
13 show it but I am not even sure what all the requirements are
14 for that in regard to public hearings.

15 MR. DALRYMPLE: There is a public hearing require-
16 ment for that.

17 MR. MAXEY: The site specific though, I would be
18 very surprised if Judge Calhoun would not tell you even that
19 doesn't require site specific.

20 Our lawyer could not believe it so he appealed it
21 to the state and we found out about \$2000 later that Judge
22 Calhoun was right and he explained to us. I wrote this, he
23 said. I was in on writing the County Charter and the other
24 rules and regulations associated with it and he said, it
25 requires a hearing on the general topic, not on site specific,

1 and that needs to be looked into. At least changing the
2 zoning would require site specific. You have got to post it
3 on the property and all that.

4 CHAIRMAN ADAMS: Well, thank you.

5 We have very patient Alex Greene in the back and
6 we would like to get him in if we could.

7 Thank you all very much,

8 Mr. Greene, we are sorry for all this time. We
9 appreciate your patience.

10 MR. GREENE: For the record, I am Alexander Greene
11 from the Office of the County Executive and this statement
12 represents the views of the Executive.

13 While this may be a very popular issue, considering
14 the general if not unanimous opposition to further entrench-
15 ment of sludge, it is not an appropriate, necessary or
16 effective charter issue.

17 The Charter of Montgomery County sets forth the
18 basic framework for the structure and orderly processes of
19 our government. The Charter already provides a legislative
20 and executive powers necessary to make responsible decisions
21 to protect the health and safety of our citizens and to
22 provide for proper land use. Narrow or transient limitations
23 such as is proposed under Question E, if effective, would
24 limit the ability of our duly elected representatives to
25 act in the best interests of the people of the county; but

1 more likely would relegate to the courts the decision making
2 process which should be the province of our elected repre-
3 sentatives.

4 The proposed Charter amendment would have limited
5 effect and perhaps would be counterproductive to the best
6 interests of the County. Since funds for construction and
7 operation of sludge entrenchment are provided by the WSSC
8 rather than the County and since WSSC or its agents are
9 the permittees for entrenchment sites, it is not likely that
10 this amendment will serve an purpose. In fact, it may be
11 interpreted as precluding the county from expending funds
12 otherside required to do the inspecting and monitoring needed
13 to protect the public health from the entrenchment which has or
14 is taking place.

15 The Executive and the Council have, as a matter of
16 policy, decided that sludge composting is a more desirable
17 method of disposal. To that end there has been a consistent
18 effort to have a facility constructed at Site 2. Until that
19 site is in operation, ad ecision has been made to proceed
20 with an interim facility at Dickerson, to be ready by January
21 1 to receive the County's allotted share of sludge expected
22 by that time. Further sludge entrenchment would be
23 possible only if now unforeseen events preclude us from
24 meeting our scheduled date. But were that necessary, there is
25 grave doubt that this amendment would be effective mainly

1 for the reasons already stated reinforced by the fact that
2 our receipt of sludge which is mandated by Federal Court Order
3 would have to be placed in a site already permitted by the
4 State.

5 CHAIRMAN ADAMS: There is a site that has been
6 approved and --

7 MR. GREENE: That is right. We have appeared before
8 the County Council to request the amendment to the 10-year
9 water and sewer plan, solid waste plan. We pointed out to
10 them that while Dickerson, by every effort on our part and
11 by the Maryland Environmental Service, and the WSSC, we hoped
12 would be ready by January 1 if something happened. We do
13 have to get it permitted by the state. If something were to
14 happen that precluded that a back up would be necessary and
15 the only back up that would be necessary would be cross
16 trenching at Site 216 which has already been approved and
17 which has a permit.

18 CHAIRMAN ADAMS: Which one is that?

19 MR. GREENE: At Norbeck.

20 So that was a warning literally that we felt it
21 was our responsibility to advise the Council of and it is
22 one we hope we don't have to pursue. Composting, by policy
23 and every other reason, a much more desirable method of
24 disposal.

25 CHAIRMAN ADAMS: Mr. McGukian and Ms. Kanchuger,

1 do you have further thoughts or should we just start asking
2 question? However you would like to proceed.

3 MS. KANCHUGER: Well, because there has been some
4 questions to how the Charter amendment would be interpreted,
5 I don't think that is the problem. I don't think we are
6 going to have facing us right off court challenges. I think
7 we are going to have facing us right off the tons of sludge
8 that has to be disposed of.

9 What the amendment says is no expenditure of
10 county funds shall be made or authorized for the construction
11 or operation of a system for bearing or trenching sludge.
12 And, that is not now -- Those are not functions performed
13 by the county. Construction and operation of sludge trench-
14 ing is the responsibility of the Washington Suburban Sanitary
15 Commission which is implementing county policy as expressed
16 in the 10-year water and sewer plan which is amended annually
17 and required by state law.

18 The operation, the day-to-day operation, of the
19 sludge trenching site is contracted by WSSC to the Maryland
20 Environmental Service which is a part of the Department of
21 Natural Resources of the State of Maryland.

22 The county may also not purchase or contract for
23 the service of burying or trenching sludge.

24 The county has not purchased any of the sludge
25 trenching sites. The county has held the hearings that were

1 talked about by the gentlemen who were sitting here before.
2 WSSC has been the purchasing agent and the relationship
3 between the county and WSSC is not a contractual one so
4 there is prohibition of a contract for providing that service
5 and is not one that would affect what is going on now.

6 Also the county did not seek Federal or state
7 permits for burying or trenching.

8 If, as the gentlemen said, getting approval of
9 the State Department of Health for any amendment to the 10-
10 year water and sewer plan is a permit, perhaps the county
11 would be prohibited from doing that, but I think that trying
12 to pick out how much of an expenditure of county funds has
13 gone into action on the 10-year water and sewer plan is
14 certainly a minor part of the cost of sludge trenching.

15 So, as the general manager and general counsel at
16 WSSC said to me when I presented this wording to them and
17 said what effect will this have on sludge trenching on
18 Montgomery County, they said none.

19 MR. MC GUKIAN: I was going to say that I think
20 Delegate Ficker gave the best reason for our not supporting
21 this amendment which is that if there are successful legal
22 challenges to the only two alternatives that are presently
23 possible within the time limits we have, that is Dickerson
24 and Site #2, there is no other place to put the sludge. And
25 we are under a Federal Court Order to take our share of the

1 sludge. There is no alternative because you cannot turn the
2 spigots off. It is there. Montgomery County has to recognize
3 that --which it has recognized -- that it must perform its
4 obligation in the region.

5 CHAIRMAN ADAMS: I don't know whether to get to the
6 substance or the more technical questions.

7 I sort of have the same response that Delegate
8 Ficker has, that the county is all over this and some way
9 there must be a connection. I am watching the Congress.
10 They look for the most obscure possible connections. I
11 think they passed an amendment to say that the President may
12 not transmit the census to the Congress because they are
13 worried about the counting of illegal aliens. Well, I --
14 Somewhere someone will have to spend two dollars to transmit
15 that thing so they cut it off with that little connection.
16 The President doesn't prepare the census reports or anything.

17 So, I am wondering if the matter you sloughed off
18 a little bit about the permit isn't the little touch of
19 county involvement they might have. I wish you would explain
20 that.

21 MS. KANCHUGER: You are absolutely right. There
22 is a great deal of county involvement. WSSC was created by
23 state law and is, if you are technical, a state agency. But
24 over the years, since the founding in 1918, actually very
25 recently, there have been a number of amendments to the law

1 giving the counties a great deal of control over the way in
2 which WSSC operates and making the counties the policy-making
3 bodies.

4 We do not make up how we are going to do either
5 water supply or sewage treatment or sludge disposal in the
6 county. It is county policy that we implement.

7 However, it is WSSC funds.

8 CHAIRMAN ADAMS: Well, my mind is clearly not made
9 up. So I am trying to ask these questions for the record
10 and or my own ability to get a hold of this question.

11 What then do you think of the expenditures that
12 the county makes, admittedly a bit of an obscure handle,
13 but the expenditures that the county makes in reviewing and
14 approving sites and authorizing or approving your budget?
15 Don't some of those constitute an expenditure of some money
16 that is related and necessary to the authorization?

17 MS. KANCHUGER: Right. But I don't think anybody,
18 even the sponsors of this amendment, would want those processes
19 to stop. This is where the responsible planning goes on and
20 if you look at what the county has done recently, they have,
21 as Alex said, declared trenching will no longer be permitted
22 in Montgomery County. I think the citizens near the trenching
23 site have been very successful in convincing the county
24 officials that that is not a policy that the county should
25 adopt. The county is proceeding full speed ahead with com-

1 posting and the action taken by the county government in
2 purchasing the Dickerson site is unique in that no other
3 sludge disposal site has been purchased by the county. Site
4 #2, the Calverton site, was purchased by the WSSC but the
5 county was very insistent that they make it clear that
6 composting is their priority by going ahead and purchasing
7 that land to get the Dickerson site moving.

8 CHAIRMAN ADAMS: Could you all explain briefly
9 the County Council's or the county government's approval of
10 the WSSC budget? What is that process?

11 MS. KANCHUGER: That is an involved process in
12 which the budget is reviewed by the County Executive. The
13 County Executive makes his recommendations to the County
14 Council for realignment of priorities in the WSSC budget or
15 making cuts or adding to it and the Council does as thorough
16 a job in reviewing the WSSC budget as it does in any of the
17 others not because it is county tax money that is involved
18 but because it is county citizens whose rates will be
19 increased if the WSSC budget gets larger. So, it is a --

20 CHAIRMAN ADAMS: The money, as I understand it,
21 is from user fees?

22 MS. KANCHUGER: The money is from user fees in the
23 case of the operating funds. There is an ad valorem tax,
24 a small one in Montgomery County, larger in Prince George's
25 County, to handle storm drainage. And, there is bond money

1 used for capital expenditures.

2 CHAIRMAN ADAMS: So you point is that this amendment
3 reads no expenditure of county funds shall be made or auth-
4 orized? In other words, the County Council authorizes, in
5 effect, by approving your budget that these activities go on,
6 but they are not authorizing expenditure of county funds.

7 MS. KANCHUGER: Right.

8 MR. DALRYMPLE: They approve the CIP but the
9 approval of the CIP doesn't --

10 MS. KANCHUGER: Once we know the size of the CIP
11 we have to go float bonds on the open market to finance
12 the amount approved.

13 MR. DALRYMPLE: And, what they are doing now with
14 the CR charges over there, I don't even know whether they
15 are taking away the full faith and credit of the county would
16 have any impact on the county to go float bonds. Now you
17 have so much damned money --

18 MS. KANCHUGER: Well, the way the WSSC interprets
19 the full faith and credit clause is that we do have to include
20 it on a bond. It is a wording, a phrasing, that is in our
21 bonds. But we have never called upon the county to actually
22 back up those bonds.

23 CHAIRMAN ADAMS: So there is an arguable point that
24 that is a link?

25 MS. KANCHUGER: Oh, yes. I am not denying there

1 links. We are just saying that the day-to-day operation of
2 a sludge site is not done with county funds.

3 MR. MC GUKIAN: I don't think that any court
4 could reasonably say that backing up WSSC bond funds
5 constitutes county money.

6 MS. KANCHUGER: It is your money and mine if you
7 are buying wash tubs.

8 MR. DALRYMPLE: Didn't Judge Smith in the Calverton
9 thing tell the WSSC I told you to --

10 MS. KANCHUGER: Yes, that is the overriding, yes.
11 Delegate Ficker is wrong. None of those lawsuits are now
12 pending. All of those suits have been dismissed and Judge
13 Smith has said, get out of my court and don't come back here.
14 Just take care of your sludge.

15 MR. DALRYMPLE: I think Delegate Ficker said they
16 are pending in Appellate Court so some of them are.

17 MS. KANCHUGER: We are under construction on Site
18 #2.

19 CHAIRMAN ADAMS: Could you explain again under
20 the 10-year plan that you have to go to the state and Health
21 Department for a permit. What is that again?

22 MS. KANCHUGER: The 10-year water and sewer plan
23 law was enacted by the State legislature a few years back
24 saying that each county in the State of Maryland is
25 responsible for planning ahead to meet their water and sewer

1 needs and -- so there is an annual review just as there is
2 with the budget and of the CIP and annually the 10-year water
3 and sewer plan and also the solid waste plan are submitted
4 to the state saying this is what we state to be county policy
5 in these areas for the coming year.

6 MR. GREENE: I might point out that is under state
7 law too. It clouds the question as to whether the funds used
8 in that process are funds which are totally under control of
9 the county.

10 CHAIRMAN ADAMS: There is an argument that some
11 money is spent in the design of that but your counter argu-
12 ment is, hey, the state makes us do that.

13 MR. GREENE: This discussion is fraught with how
14 legal questions and how much the courts would have to be
15 concerned with one's interpretation of --

16 MR. DALRYMPLE: As I understand it, the 10-year
17 plan is basically a planning document and it is no more of
18 a permit than a master plan would be. It is a plan, not a
19 permit.

20 CHAIRMAN ADAMS: Okay. When you said you had to
21 go to the State Health Department to get, what, a permit
22 under that plan --

23 MS. KANCHUGER: No, no, no. The plan is approved
24 at the state level by the State Department of Health.

25 CHAIRMAN ADAMS: We also have to get --

1 MS. KANCHUGER: Various of the permits that are
2 applied for also to the State Department of Health.

3 CHAIRMAN ADAMS: Who gets the permit?

4 MS. KANCHUGER: WSSC.

5 MR. GREENE: The permit will only issue if what
6 they apply for conforms to the 10-year plan.

7 I might say in the case of the Dickerson facility
8 it will be the Maryland Environmental Service that is the
9 applicant for the permit. They will operate that site under
10 lease from the county.

11 CHAIRMAN ADAMS: The county takes the 10-year plan.
12 The Health Department gets the plan approved. The WSSC goes
13 to get sites specific.

14 MS. KANCHUGER: In implementing the county's 10-year
15 plan. We implement both the Montgomery County and the
16 Prince George's County plans. Then we proceed and say,
17 because this activity is requested in the county's 10-year
18 plan, we are going to go ahead and we need a permit to do
19 such and such.

20 MR. BANKSON: There is no relationship between
21 Dickerson and WSSC?

22 MR. GREENE: The relationship there is by contract.
23 The county owns the land and it leases it to the Maryland
24 Environmental Service. The Maryland Environmental Service
25 has a contract with the Sanitary Commission to provide the

1 composting for materials delivered to it.

2 MS. KANCHUGER: Now, since we must account for the
3 quantity of sludge that we are acquired to take by law, we
4 are required to handle the county's share of the sludge
5 produced at the Blue Plains --

6 MS. DAVIS: So the Dickerson site proposal really
7 would be an outright, unique, but outright county involvement
8 because the county does own that land and --

9 MR. GREENE: Absolutely, but that it not trenching.

10 MS. KANCHUGER: That is the effort to get away
11 from trenching.

12 MS. DAVIS: What are the chances, if any, that the
13 Dickerson site could be used for trenching if the composting
14 operation doesn't get under way on schedule?

15 MR. GREENE: I know it can't be because the sub-
16 surface conditions there really don't permit it. I think
17 there have been tests on it and in addition to the fact that
18 there is a commitment not to. But, it is not available for
19 it. It is not -- conditions are not appropriate for trenching
20 there. In fact, I think it was examined at one time or that
21 general area was.

22 MS. DAVIS: But, leaving that aside, this proposed
23 charter amendment would at least in theory preclude the county
24 from doing that. I guess what I am trying to get at is this
25 charter amendment will have no effect on sludge trenching

1 because all sludge trenching is a WSSC situation so there is
2 at least one possible situation where this amendment could
3 have some effect.

4 MR. GREENE: No. The reason for that is simply a
5 matter of time. It is not generic. We have exercised our
6 option on the Dickerson site. The Council has approved the
7 supplementary funds and so on. We have exercised and
8 acquired the Dickerson site so we now own the site. And, the
9 lease arrangements with the Maryland Environmental Service
10 are going through. We would not be expending further funds.
11 In fact, we are in a position now of receiving pay back from
12 the Maryland Environmental Service which is going to pay us
13 rental for the use of the site and which will construct the
14 facilities out of its own finances and be repaid by payments
15 from the Sanitary Commission.

16 So our investment will amount to the kinds of things
17 I mentioned in the statement which are the counterproductive
18 problems.

19 What we are going to spend money on at the Dickerson
20 site is in monitoring to make sure that the operation and
21 maintenance are safe in the best interest of the residents of
22 the county. We are going to monitor the wells. We are going
23 to monitor the air. We are going to see to it that the terms
24 and conditions of the regulations which govern the permit
25 for that site are maintained. And, it is that regulatory

1 process is the kind of money we will be spending. Now, to
2 broadly define that as part of the operation of the site
3 which may be stretching the point, that may be where we would
4 be --

5 CHAIRMAN ADAMS: It seemed to me to be a little
6 unfair to suggest that this amendment was going to prohibit
7 that kind of monitoring.

8 MR. GREENE: That is right. In other words, I am
9 not saying --

10 CHAIRMAN ADAMS: If you are operating and you are
11 monitoring, I don't see how your monitoring can be part of
12 their operation.

13 MS. KANCHUGER: Actually the monitoring has been
14 turned over by DEP by WSSC in the case of on-going sites.
15 So, very often they find it in their best interest to turn
16 it over to us.

17 MR. GREENE: It can be defined as part of the
18 operational -- The O&M Manual, the Operations and Maintenance
19 Manual, which is set up for the operation of a facility,
20 includes monitoring to see to it that there are not violations
21 of the requirements.

22 MR. CHEN: Is the county paying WSSC for the
23 monitoring activities?

24 MR. GREENE: I think probably not.

25 MS. KANCHUGER: No. We pay for them when we do them.

1 We have laboratory to do the test.

2 MR. CHEN: But you just said that DEP is turning
3 over the monitoring.

4 MS. KANCHUGER: DEP is giving up that function
5 itself and requesting WSSC to do it.

6 MR. BANKSON: But the monitoring function is
7 required by some other law, State Health Department or
8 Federal or --

9 MS. KANCHUGER: No. The monitoring is required
10 by the conscience of the county government.

11 CHAIRMAN ADAMS: Well, what is the likelihood that --
12 I am not sure my thumb is on the checkerboard. What is the
13 likelihood that the composting is going to be stopped? As
14 a casual observer and newspaper -- It seems there is a law-
15 suit under way, is that correct?

16 MR. MC GUKIAN: There is a lawsuit at Site #2.
17 The litigation continues there. There is no litigation
18 at this point on Dickerson and we are not aware of any.

19 CHAIRMAN ADAMS: Is there any contemplated?

20 MR. MC GUKIAN: Delegate Ficker raised the issue
21 tonight and he says he has talked to some lawyers that are
22 thinking about doing it. That is more than we know.

23 MR. DALRYMPLE: But you are not enjoined in
24 Calverton?

25 MR. MC GUKIAN: No, no, we are not enjoined.

1 MS. KANCHUGER: Prince George's County tried and
2 Judge Smith said you can't enjoin in this. It has to pro-
3 ceed. The General Manager of WSSC is required to proceed
4 in this.

5 MR. DALRYMPLE: Well, yes. But that wouldn't
6 necessarily be true at Dickerson, would it?

7 MS. KANCHUGER: No.

8 MR. DALRYMPLE: But, I think conceivably somebody
9 could go in and try to enjoin the construction of Dickerson
10 while the suit was pending but in order to do that it seems
11 to me they would have to put one very large bond.

12 CHAIRMAN ADAMS: Are there further questions?

13 (No response.)

14 CHAIRMAN ADAMS: Thank you all. We appreciate
15 your patience and expertise.

16 MR. MC GUKIAN: May I say one thing on the FOP
17 presentation. As the County Attorney I just want to make it
18 known that I did not approve that amendment, the language of
19 it. We didn't give any opinion on it that I am aware of, at
20 least any official opinion, and it seemed to me that their
21 counsel at one point was saying that in effect what he was
22 told by the County Attorney's Office or someone in it was
23 that it shouldn't be a long and complicated amendment but
24 rather concise, not that that language they wound up with
25 was approved by our office which it was not.

1 CHAIRMAN ADAMS: I appreciate that because I think
2 the record wasn't clear. At one point I think the attorney
3 said, okay, we are going to get an opinion, and then I think
4 one or the other said, oh, yes, we heard from the County
5 Attorney. So, I appreciate clarifying that.

6 If there is no further testimony, we will adjourn
7 for the night. We will keep the record open. I believe we
8 may get a written comment or two from other people for about
9 ten days.

10 Thank you very much.

11 (Whereupon, at 11:20 o'clock p.m., the hearing was
12 adjourned.)
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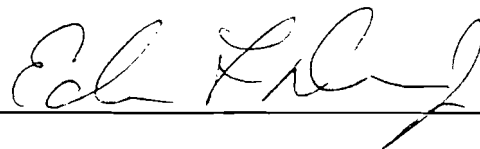
CASE TITLE: Charter Review Commission: Question F and
Question E

HEARING DATE: September 30, 1980.

LOCATION: Rockville, Maryland

I hereby certify that the proceedings and evidence
herein are contained fully and accurately on the tapes and
notes reported by me at the hearing in the above case before
MONTGOMERY COUNTY, CHARTER REVIEW COMMISSION
and that this is a true and correct transcript of the same.

Date: September 30, 1980



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